

HOUSE No. 4719

The Commonwealth of Massachusetts

HOUSE OF REPRESENTATIVES, March 6, 2006.

The committee on Environment, Natural Resources and Agriculture, to whom was referred the petition (accompanied by bill, House, No. 1314) of Alice K. Wolf relative to reducing Diesel emissions from certain construction vehicles, reports recommending that the accompanying bill (House, No. 4719) ought to pass.

For the committee,

FRANK I. SMIZIK.

The Commonwealth of Massachusetts

In the Year Two Thousand and Six.

AN ACT REDUCING DIESEL EMISSIONS FROM NON-ROAD CONSTRUCTION VEHICLES.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

- 1 Chapter 30 of the General Laws is hereby amended by inserting
2 after Section 39S the following new section:—
3 Section 39T. Use of ultra low sulfur diesel fuel and best avail-
4 able technology in non-road vehicles. For purposes of this section
5 only, the following terms shall have the following meanings:
6 “Public entity” means the commonwealth, or political subdivi-
7 sion thereof, including authority, department, or by any county,
8 city, town, district, or housing authority.
9 “Commissioner” means the commissioner of the department of
10 environmental protection.
11 “Contractor” means any person, corporation, partnership, joint
12 venture, sole proprietorship, or other entity awarded a contract
13 pursuant to sections 38A½ to 38O, inclusive, of chapter 7 and any
14 contract awarded or executed pursuant to section 11C of chap-
15 ter 25A, section 39M of chapter 30, or sections 44A to 44H, includ-
16 ing, of chapter 149, which is for an amount or estimated amount
17 greater than one hundred thousand dollars.
18 “Department” means the department of environmental protection.
19 “Motor vehicle” means any self-propelled vehicle designed for
20 transporting persons or property on a street or highway.
21 “Non-road engine” means an internal combustion engine
22 (including the fuel system) that is not used in a motor vehicle or a
23 vehicle used solely for competition, or that is not subject to stan-
24 dards promulgated under section 7411 or section 7521 of title 42
25 of the United States code, except that this term shall apply to
26 internal combustion engines used to power generators, com-
27 pressors or similar equipment used in any construction program
28 or project.

29 “Non-road vehicle” means a vehicle that is powered by a non-
30 road engine, fifty horsepower and greater, and that is not a motor
31 vehicle or a vehicle used solely for competition, which shall
32 include, but not be limited to, excavators, backhoes, cranes, com-
33 pressors, generators, bulldozers and similar equipment.

34 “Person” means any natural person, co-partnership, firm, com-
35 pany, association, joint stock association, corporation or other like
36 organization.

37 “Public works contract” means a contract with a public entity
38 for a construction program or project involving the construction,
39 demolition, restoration, rehabilitation, repair, renovation, or abate-
40 ment of any building, structure, tunnel, excavation, roadway, park
41 or bridge; a contract with a public entity for the preparation for
42 any construction program or project involving the construction,
43 demolition, restoration, rehabilitation, repair, renovation, or abate-
44 ment of any building, structure, tunnel, excavation, roadway, park
45 or bridge; or a contract with a public entity for any final work
46 involved in the completion of any construction program or project
47 involving the construction, demolition, restoration, rehabilitation,
48 repair, renovation, or abatement of any building, structure, tunnel,
49 excavation, roadway, park or bridge.

50 “Ultra low sulfur diesel fuel” means diesel fuel that has a sulfur
51 content of no more than fifteen parts per million.

52 (b)(1) Any diesel-powered non-road vehicle that is owned by,
53 operated by or on behalf of or leased by a public entity shall be
54 powered by ultra low sulfur diesel fuel.

55 (2) Any diesel-powered non-road vehicle that is owned by,
56 operated by or on behalf of or leased by a public entity shall uti-
57 lize the best available technology for reducing the emission of
58 pollutants.

59 (c)(1) Any solicitation for a public works contract and any con-
60 tract entered into as a result of such solicitation shall include a
61 specification that all contractors in the performance of such con-
62 tract shall use ultra low sulfur diesel fuel in diesel-powered non-
63 road vehicles and all contractors in the performance of such
64 contract shall comply with such specification.

65 (2) Any solicitation for a public works contract and any con-
66 tract entered into as a result of such solicitation shall include a
67 specification that all contractors in the performance of such con-

68 tract shall utilize the best available technology for reducing the
69 emission of pollutants for diesel-powered non-road vehicles and
70 all contractors in the performance of such contract shall comply
71 with such specification.

72 (d)(1) The commissioner shall make determinations, and shall
73 publish a list containing such determinations, as to the best avail-
74 able technology for reducing the emission of pollutants to be used
75 for each type of diesel- powered non-road vehicle to which this
76 section applies for the purposes of paragraph two of subdivision b
77 and paragraph two of subdivision c of this section. Each such
78 determination, which shall be updated on a regular basis, but in no
79 event less than once every six months, shall be primarily based
80 upon the reduction in emissions of particulate matter and nitrogen
81 oxides associated with the use of such technology and shall in no
82 event result in an increase in the emissions of either such pollu-
83 tant. In determining the best available technology for reducing the
84 emission of pollutants, the commissioner shall select technology
85 from that which has been verified by the United States Environ-
86 mental Protection Agency or the California Air Resources Board
87 for use in non-road vehicles or onroad vehicles where such tech-
88 nology may also be used in non-road vehicles, but the commis-
89 sioner may select technology that is not verified as such as is
90 deemed appropriate.

91 (2) No public entity or contractor shall be required to replace
92 best available technology for reducing the emission of pollutants
93 or other authorized technology utilized for a diesel-powered non-
94 road vehicle in accordance with the provisions of this section
95 within three years of having first utilized such technology for such
96 vehicle.

97 (e) A public entity shall not enter into a public works contract
98 subject to the provisions of this section unless such contract per-
99 mits independent monitoring of the contractor's compliance with
100 the requirements of this section and requires that the contractor
101 comply with section 39S of this code. If it is determined that the
102 contractor has failed to comply with any provision of this section,
103 any costs associated with any independent monitoring incurred by
104 the public entity shall be reimbursed by the contractor.

105 (f)(1) The provisions of paragraph one of subdivision b of this
106 section shall apply to all diesel-powered non-road vehicles that

107 are owned by, operated by or on behalf of or leased by a public
108 entity and the provisions of paragraph one of subdivision c of this
109 section shall apply to all public works contracts six months after
110 the effective date of this section.

111 (2) The provisions of paragraph two of subdivision b of this
112 section shall apply to all diesel-powered non-road vehicles that
113 are owned by, operated by or on behalf of or leased by a public
114 entity and the provisions of paragraph two of subdivision c of this
115 section shall apply to any public works contract that is valued at
116 two million dollars or more one year after the effective date of this
117 section.

118 (3) The provisions of paragraph two of subdivision c of this
119 section shall apply to all public works contracts eighteen months
120 after the effective date of this section.

121 (g)(1) On or before January 1, 2008, and every succeeding Jan-
122 uary 1, department shall publish a report on the use of ultra low
123 sulfur diesel fuel in diesel-powered non-road vehicles and the use
124 of the best available technology for reducing the emission of pol-
125 lutants and such other authorized technology in accordance with
126 this section for such vehicles by public entities during the imme-
127 diately preceding fiscal year. This report shall be compiled from
128 data provided by public entities to the department. This report
129 shall include, but not be limited to (i) the total number of diesel-
130 powered non-road vehicles owned by, operated by or on behalf of
131 or leased by each public entity or used to fulfill the requirements
132 of a public works contract for each public entity; (ii) the number
133 of such non-road vehicles that were powered by ultra low sulfur
134 diesel fuel; (iii) the number of such non-road vehicles that utilized
135 the best available technology for reducing the emission of pollu-
136 tants, including a breakdown by vehicle model and the type of
137 technology used for each vehicle; (iv) all findings and waivers,
138 and renewals of such findings and waivers, issued pursuant to
139 paragraph one or paragraph three of subdivision j or subdivision 1
140 of this section, which shall include, but not be limited to, all spe-
141 cific information submitted by a public entity or contractor upon
142 which such findings, waivers and renewals are based and the type
143 of such other authorized technology, if any, utilized in accordance
144 with this section in relation to each finding, waiver and renewal,
145 instead of the best available technology for reducing the emission

146 of pollutants; (v) this report shall be provided annually to the joint
147 committee on environment, natural resources, agriculture.

148 (h) This section shall not apply:

149 (1) where federal or state funding precludes the public entity
150 from imposing the requirements of this section; or

151 (2) to purchases that are emergency procurements pursuant to
152 section 8 of chapter 30B of the General Laws.

153 (i) Paragraph one of subdivision b and paragraph one of subdivi-
154 sion c, as that paragraph applies to all contractors' duty to
155 comply with the specification, of this section shall not apply to a
156 public entity or contractor in its fulfillment of the requirements of
157 a public works contract for such agency where such agency makes
158 a written finding, which is approved, in writing, by the commis-
159 sioner, that a sufficient quantity of ultra low sulfur diesel fuel, is
160 not available to meet the requirements of paragraph one of subdivi-
161 sion b or paragraph one of subdivision c of this section, pro-
162 vided that such agency or contractor in its fulfillment of the
163 requirements of a public works contract for such agency, to the
164 extent practicable, shall use whatever quantity of ultra low sulfur
165 diesel fuel. Any finding made pursuant to this subdivision shall
166 expire after sixty days, at which time the requirements of para-
167 graph one of subdivision b and paragraph one of subdivision c of
168 this section shall be in full force and effect unless the public entity
169 renews the finding in writing and such renewal is approved by the
170 commissioner.

171 (j) Paragraph two of subdivision b and paragraph two of subdivi-
172 sion c, as that paragraph applies to all contractors' duty to
173 comply with the specification of this section shall not apply:

174 (1) to a diesel-powered non-road vehicle where a public entity
175 makes a written finding, which is approved, in writing, by the
176 commissioner, that the best available technology for reducing the
177 emission of pollutants as required by those paragraphs is unavail-
178 able for such vehicle, in which case such agency or contractor
179 shall use whatever technology for reducing the emission of pollu-
180 tants, if any, is available and appropriate for such vehicle; or

181 (2) to a diesel-powered non-road vehicle that is used to satisfy
182 the requirements of a specific public works contract for fewer than
183 five calendar days.

184 (k) In determining which technology to use for the purposes of
185 paragraph one of subdivision j of this section, a public entity or
186 contractor shall consider the reduction in emissions of particulate
187 matter and nitrogen oxides associated with the use of such tech-
188 nology, which shall in no event result in an increase in the emis-
189 sions of either such pollutant.

190 (l) Any finding or waiver made or issued pursuant to paragraph
191 one of subdivision k of this section shall expire after one hundred
192 eighty days, at which time the requirements of paragraph two of
193 subdivision b and paragraph two of subdivision c of this section
194 shall be in full force and effect unless the public entity renews the
195 finding, in writing, and the commissioner approves such finding,
196 in writing, or the commissioner renews the waiver, in writing.

197 (m) Any contractor who violates any provision of this section,
198 except as provided in subdivision o of this section shall be liable
199 for a civil penalty between the amounts of one thousand and ten
200 thousand dollars, in addition to twice the amount of money saved
201 by such contractor for failure to comply with this section.

202 (n) No contractor shall make a false claim with respect to the
203 provisions of this section to a public entity. Where a contractor
204 has been found to have done so, such contractor shall be liable for
205 a civil penalty of twenty thousand dollars, in addition to twice the
206 amount of money saved by such contractor in association with
207 having made such false claim.

208 (o) This section shall not apply to any public works contract
209 entered into or renewed prior to the effective date of this section.

210 (p) Nothing in this section shall be construed to limit the public
211 entity's authority to cancel or terminate a contract, deny or with-
212 draw approval to perform a subcontract or provide supplies, issue
213 a non-responsibility finding, issue a non-responsiveness finding,
214 deny a person or entity pre-qualification as a vendor, or otherwise
215 deny a person or entity public entity business.